THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.25035 of 2002

Date:05-08-2005

Between:

T.Arjun S/o Narayan Singh,

Aged about 60 years, R/o Bonthapally,

Jinnaram, Medak District.

Petitioner

And

State Bank of India,

Local Head Office, rep. by the Chief General Manager, Kothi, Hyderabad and another.

Respondents

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.25035 of 2002

ORDER:

This writ petition is filed seeking a direction to the respondents to forthwith pay the retirement benefits i.e., Leave Encashment and Provident Fund Contributions of the petitioner.

The case of the petitioner is that he retired from service in the respondent bank as a Senior Assistant in the month of October, 2002, but his retirement benefits were not paid in spite of several representations. The petitioner states that the respondent bank came up with a plea that it had obtained a joint decree against the petitioner and his brothers, who are the defendants and judgment debtors in O.S.No.55 of 1992, and even though the decree was for realization of the amount covered under the mortgage property by availing agricultural loan, the second respondent is insisting for realization of the entire amount from him.

It is further stated that an application was made for loan by the brothers of the petitioner and as the petitioner was an employee in the bank, the same was forwarded to the Regional Office of the bank for approval. The Regional Officer accorded permission by observing that the petitioner is one of the
co-owners of the property sought to be mortgaged to the bank as security for repayment of the proposed loan and because of the same, the petitioner joined as mortgager of the property,
but not as the borrower or applicant. The petitioner submitted to the respondents that they can realize the amount by executing the decree against the property and also

appealed to them to proceed against the property mortgaged to the bank. The respondents served a notice on the petitioner on 06-11-2002 stating that they will set off the amount payable to him towards the Leave Encashment and Provident Fund Contributions for the decretal amount payable by the Judgment Debtors. The petitioner submitted his reply and since there is no reply from the respondents, he again issued a legal notice and requested to pay the amount towards Provident Fund Contributions and Leave Encashment. The respondents gave a contentious reply without adverting to any of his contentions and denying his rights for getting the retirement benefits. Challenging the same, the present writ petition is filed.

A counter affidavit has been filed by the respondents stating that the petitioner and his brothers as co-borrowers
were sanctioned an Agricultural Loan for purchase of a Tractor-Trailer. The petitioner was addressed time and again, while in service, about the tractor loan availed by him and his brothers, which was classified as a bad advance, resulting in filing of a suit for recovery of loan. The respondent bank filed a suit for recovery of loan amount against the petitioner and his brothers and the same was decreed with costs. The respondent bank is entitled to retain and appropriate the bank's contribution to provident fund towards liability due from its employee in terms of Rule 26 of the SBI Provident Fund Rules, apart from the exercise of right of set off available to a banker under the general law. Therefore, there are no merits in the writ petition.

The learned counsel appearing for the petitioner contended that without any authority of law or Rule, withholding of provident fund contributions and leave encashment by the bank is illegal and arbitrary; that the petitioner has not given any lien for the purpose of adjustment of the members liability to the bank from the banks contribution; that the petitioner has not taken any loan from the bank and there is no liability, and therefore, he prays to allow the writ petition.

On the other hand, the learned Standing counsel appearing for the respondents contended that Rule-26 of the State Bank of India Employees' Provident Fund Rules (for short 'Rules') specifically gives power to the bank to withhold the amounts and that the decree is passed jointly and severally against the petitioner and his brothers, and therefore, the bank can withhold the amounts relating to the leave encashment. Hence, he prays to dismiss the writ petition.

It is not in dispute that the petitioner along with his brothers availed agricultural loan to an extent of Rs.95,000/-. When the petitioner and others, who are the borrowers, failed to repay the said amount, the respondent-bank filed a suit in O.S.No.55 of 1992 on the file of the Court of the Senior Civil Judge, Medak for recovery of an amount of Rs.1,75,236/- and a preliminary decree was passed against the defendants therein on 29-12-1994. In pursuance of the said preliminary decree, a final decree was passed in I.A.No.341 of 2000 on 07-12-2000.

One of the contentions raised by the learned counsel for the petitioner is that the bank can as well proceed against the mortgaged property instead of withholding the terminal benefits, and therefore, the impugned order is bad.

Rule-26 of the Rules reads as follows:

> "When a member resigns or retires from the service of the Bank he shall, if he has served the Bank for a period of five years or more, be entitled to receive the balance at his credit in the fund. Provided that when any member resigning or retiring from the service of the Bank is under a liability incurred by him to the Bank the trustees shall, irrespective of the duration of his service, pay to the Bank out of the balance at his credit in the fund any amount due by him to the Bank (not exceeding in any case the sums contributed by the Bank to his account in the fund and any interest credited to his account on the sums so contributed).

From the above Rule, it is clear that the member of the provident fund is under liability incurred by him to the bank irrespective of the duration of his service, pay to

the bank out of the balance at his credit in the fund any amount due by him to the bank.

However, the learned counsel relied upon certain instructions issued by the State Bank of India that in case of sanction of loan for the purpose of purchase of vehicle or individual housing loan or personal loan or demand loan against the Bank's contribution to the Provident Fund or loss caused to the Bank due to negligence or connivance of member or education loan for children can only be the member and can only give a lien and no such lien was given by the bank. The note in the instructions further goes to show that no lien should be
noted against the Provident Fund Balance even an employee undertakes to guarantee a loan availed by his family members/near relatives.

The learned counsel appearing for the petitioner placed strong reliance on the judgment of this court in reported in **ARIKAREVULA SAN.RAJU v. THE.BRA.MAN.S.B.I., VISA & ORS** , wherein it was held:

> "Even in the circular issued by the bank, only the employee, own liability e.g., employees' loan etc. can be deducted from the provident fund"

Rule-26 specifically states that the liability incurred by the members of the bank would also come within the meaning of other liability. This Court also held in the above case that admittedly, the amount does not represent loan or any other liability. So, in my considered opinion, the words "any other liability" includes, the loan taken by the petitioner for agricultural purpose. Therefore, the above decision has no application to the facts of the present case.

It is not in dispute that the provident fund contributions made by the petitioner have been released. It is also not in dispute that the gratuity amount was also released. Insofar as the pension is concerned, to the extent of 90% has been

released. But the dispute is only with regard to the contributions of the bank towards provident fund and leave encashment. Rule-26 specifically provides for withholding of an amount from the contributions made by the bank. No doubt, the bank has issued certain guidelines. One of the terms and conditions for noting down the lien is that on account of the loss caused to the bank due to negligence or connivance of the member. Since the petitioner has availed the loan along with his brothers, now he cannot turn round and say that he is the guarantor of the loan in view of the fact that the decree is joint and several. Therefore, it cannot be said that without any authority, the bank is withholding the amounts payable to the writ petitioner relating to provident fund and leave encashment.

No doubt, the bank also would not be in a position

to point out any Rule with regard to withholding of leave encashment, but at the same time, there is no prohibition in the Rules for appropriate in the said amount towards loan taken by the employee. Therefore, it cannot be said that the bank is arbitrarily and illegally withholding the amounts relating to its provident fund contribution and leave encashment. The bank is withholding the amounts for the purpose of appropriate in the decree.

The contention that the bank should proceed against the mortgaged property in the first instance cannot be acceptable in view of the fact that the bank can choose its right to recover

the amounts as per the Rules. Therefore, the action of the respondents cannot be said to be arbitrary and illegal.

The writ petition is totally devoid of merit and it is accordingly dismissed. No order as to costs.

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K.C.BHANU, J

Dated August 05, 2005.

YCR